

Capital Advance Program Completion Assurance Agreement

Under Section 202 of the Housing Act of 1959 or
Section 811 of the National Affordable Housing Act

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470 (exp. 12/31/93)

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This Agreement made this _____ day of _____, 19 _____, by and between _____ party of the first part, a _____ having an office at _____ (hereinafter called the Contractor), and _____ having an office at _____ party of the second part, a _____ (hereinafter called the Owner), and the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD"), party of the third part.

Witnesseth

Whereas the Contractor and the Owner have entered into a Construction Contract dated _____, 19 _____, providing for the construction of a housing project described in said Contract, said project being known as Project Number _____, a copy of said Contract being on file with HUD and _____

Whereas the construction of the said project is to be financed by a capital advance made to said Owner by HUD, which capital advance is secured by a _____ (hereinafter called the Mortgage).

Whereas HUD is unwilling to provide portions of the capital advance unless the Contractor shall first furnish assurance to the Owner and HUD for the performance of the obligations of the Contractor under said Construction Contract including but not limited to:

- (a) the completion of said project in accordance with drawings and specifications referred to in said Construction Contract;
- (b) the completion of said project free and clear of any liens, claims or encumbrances whatsoever, except for the lien of the HUD mortgage;
- (c) the payment of all mechanics and laborers employed in the construction of the project at wages prevailing in the locality of the project as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (if applicable);

- (d) the satisfaction of any loss, damage, expense or claim which the Owner or HUD may suffer or sustain through the failure of the Contractor to fulfill the provisions of (a), (b), or (c) above or through the failure of the Contractor to fulfill all obligations under said Construction Contract.

Now Therefore, in consideration of the mutual promises and undertakings hereinafter contained, and for the purpose of inducing HUD to make portions of the capital advance available during construction, the parties hereto on behalf of themselves, their successors or assigns respectively, undertake and agree that:

- (a) The Contractor has deposited with HUD, or if HUD so elects, with a depository satisfactory to HUD, a Completion Assurance Fund (hereinafter called the Fund), in the amount of \$ _____ to secure or indemnify the Owner or HUD, as the case may be, for any expenses, loss, or damage suffered or sustained as the result of

any default by the Contractor in the performance of the Construction Contract; it being understood and agreed that said Fund shall at all times be under the control of HUD or its assigns and is deposited in the form of: (a) cash; or (b) securities of or fully guaranteed as to principal by, the United States of America, which securities shall be freely negotiable or assigned to HUD.

(Delete what is not applicable.)

(b) HUD shall maintain such Fund as a separate trust account to be disbursed as follows:

(1) To the Contractor or party making such deposit during the course of construction, as may be deemed necessary by HUD.

(2) To the Contractor or party making such deposit, the balance of such fund so deposited remaining upon final capital advance disbursement by HUD except that there shall be withheld from the payment of said balance an amount equal to 2 1/2% of the total amount of the Construction Contract, which sum is to be retained in such account for a period of fifteen months from the date of substantial completion as defined in the Construction Contract. Said sum shall be held as a fund to guarantee against defects in construction due to faulty materials or workmanship or damages to the mortgaged premises

resulting from such defects, which defects or damage become apparent within one year after the date of the aforesaid substantial completion. Said sum may be used for the correction of such defects or damage in the event the Contractor fails to make such corrections. The Contractor's liability for such corrections is not limited by the amount of such sum.

(3) To HUD the entire Fund or balance remaining therein in the event of a default by the Contractor under the Construction Contract, to be used by HUD to indemnify it and the Owner as the case may be, for any loss, damage or expense whatsoever which they may suffer by reason of the Contractor's failure to properly perform said Construction Contract.

(4) This Agreement shall not alter or limit the obligations and liabilities of the Contractor under the Construction Contract, but shall be deemed to be merely additional security for the performance by the Contractor of the obligations thereunder.

(5) It is understood and agreed that in the event the Fund is held by a depository, that said depository is not charged with any duty or responsibility to see to the performance of or compliance with any agreements between any of the parties hereto other than that of paying over said Fund as directed in writing by HUD, nor to see to the application of said Fund after making disbursement as so directed.

In Witness Whereof the parties have duly executed these presents the day and year first above mentioned.

Attest (Contractor)

By

Owner

By

**United States of America
Secretary of Housing and Urban Development**

By

Seals must be affixed. To be appropriately acknowledged if required by the laws of the State having jurisdiction.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)